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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DAVID AND NATASHA WIT, et al.,  
  
Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH,  
  
Defendant.

GARY ALEXANDER, et al.,  
  
Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH,  
  
Defendant.

Case No. 3:14-CV-02346-JCS  
Related Case No. 3:14-CV-05337-JCS

**JOINT CASE MANAGEMENT  
STATEMENT**

Date: January 21, 2022  
Time: 2:00 p.m.  
Judge: Hon. Joseph C. Spero

Pursuant to Civil Local Rule 16-10(d) and the Court's September 8, 2021 Civil Minute Order (*Wit* ECF No. 564), Plaintiffs and Defendant, by and through their respective counsel, submit the following Joint Case Management Statement. The parties' last Joint Case Management Statement was filed September 3, 2021. (ECF No. 563.) As set forth in Local Rule 16-10(d), the parties are reporting progress or changes since that statement.

## **I. Status of Appellate Proceedings**

UBH appealed the injunction and final judgment; the appeals were consolidated by the Court of Appeals on February 12, 2021. Briefing on the appeal was completed on June 2, 2021, and the Court of Appeals heard oral argument on August 11, 2021. The Court of Appeals has not yet issued a ruling.

## **II. Status of Remedial Proceedings**

### **a. Reprocessing**

On February 12, 2021, the Court of Appeals granted UBH's motion to stay the reprocessing remedy pending appeal; that stay remains in effect.

### **b. Status of Guideline and Fiduciary Duty Trainings**

Pursuant to the Court's April 16, 2021 Order, the deadline for UBH to complete the trainings prescribed in the Remedies Order, ECF 491 at 96-98, was originally September 30, 2021. *See* Stip. and Order Extending Deadline to Complete Training (ECF No. 553) at 5. On September 22, 2021, the Special Master granted, in part, UBH's request for an extension of that deadline. *See* Special Master's Order re Fiduciary Training (ECF No. 565). Pursuant to the Special Master's Order, the deadline to complete the fiduciary duty training was extended to October 29, 2021. *Id.* at 3.

As the parties previously reported, with the Special Master's approval, UBH arranged for the American Society of Addiction Medicine ("ASAM"), the American Association for Community Psychiatry ("AACP"), and the American Academy of Child & Adolescent Psychiatry ("AACAP") to conduct the required trainings on the clinical guidelines. *See* Joint Case Management Stmt. (ECF No. 554) at 2. UBH reported to the Special Master on November 3, 2021 that "over 99 percent" of required attendees completed all clinical guideline training

1 modules by the September 30, 2021 deadline.

2 With regard to the training on fiduciary duties, the parties conferred and reached  
 3 agreement on the majority of the training content, then submitted the remaining disputes to the  
 4 Special Master for resolution. The Special Master issued three orders resolving those disputes,  
 5 such that the content of the trainings could be finalized. *See* Special Master's Order re Script for  
 6 Asynchronous Fiduciary Training (ECF No. 560); Special Master's Order (ECF No. 562); Special  
 7 Master's Order (ECF No. 565). As previously reported, the majority of UBH's personnel received  
 8 asynchronous training on fiduciary duties. Per the Special Master's August 26, 2021 Order (ECF  
 9 No. 562), UBH's Peer Reviewers and management personnel received live training on fiduciary  
 10 duties, but did not also complete the asynchronous training. UBH reported to the Special Master  
 11 on November 3, 2021 that 100 percent of all required attendees completed the live or  
 12 asynchronous ERISA fiduciary duty trainings by the October 29, 2021 deadline.

13 After UBH's ERISA trainings, some attendees submitted questions to the UBH in-house  
 14 administration via email. The Special Master circulated a draft of the questions and proposed  
 15 responses to the parties on December 16, 2021. UBH provided its response, and a finalized  
 16 version of the ERISA training questions and answers was circulated by the Special Master on  
 17 December 20, 2021, which the Special Master approved on December 23, 2021.

### 18 **c. Injunction Implementation**

19 As the parties previously reported, Plaintiffs identified certain respects in which they  
 20 contend UBH has not faithfully implemented the Court-ordered criteria as required by Section  
 21 IV.B.1 of the Remedies Order (ECF No. 491 at 96-98). UBH denied Plaintiffs' assertions.

22 On May 28, 2021, the parties submitted to the Special Master a Joint Submission  
 23 Regarding Implementation Issues, setting forth the parties' respective positions on the matters  
 24 Plaintiffs raised. The Special Master held a hearing on implementation issues on August 16,  
 25 2021, which was also attended by Dr. David Gastfriend, M.D., and Dr. Kenneth Minkoff, M.D.,  
 26 the psychiatric experts the Special Master retained to assist him on matters relating to the clinical  
 27 guidelines. Pursuant to the Special Master's request, the parties each made a supplemental  
 28 submission on August 24, 2021.

1 The Special Master issued a draft order on implementation issues on September 14, 2021.  
 2 Both parties lodged written objections, which were fully briefed. Following additional efforts by  
 3 the Special Master and the parties to resolve the objections by agreement, the Special Master filed  
 4 his Order Regarding Implementation Issues Addressed in the Parties' May 28, 2021 Joint  
 5 Submission on December 3, 2021. ECF No. 568.

6 Plaintiffs raised an additional issue relating to UBH's implementation of the injunction by  
 7 letter dated September 24, 2021. UBH responded, and the Special Master circulated a draft Order  
 8 Regarding Plaintiffs' September 24, 2021 Letter to the parties on December 22, 2021. UBH  
 9 lodged written objections to the draft order on January 7, 2022.

10  
 11  
 12 Respectfully Submitted:

13 Dated: January 14, 2022

ZUCKERMAN SPAEDER LLP

/s/ Caroline E. Reynolds

Caroline E. Reynolds  
 Adam Abelson

PSYCH-APPEAL, INC.  
 Meiram Bendat

*Attorneys for Plaintiffs*

19 Dated: January 14, 2022

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*Attorneys for Defendant United Behavioral Health*

**ATTESTATION**

Pursuant to Civil Local Rule 5-1(h)(3) regarding signatures, I attest that concurrence in the filing of this document has been obtained from the other signatories.

Dated: January 14, 2022

/s/ Caroline E. Reynolds  
Caroline E. Reynolds